

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

BRENDA M. KRUSZEWSKI,

Plaintiff and Appellant,

v.

COLLECT ACCESS, LLC et al.,

Defendants and Respondents.

E070923

(Super.Ct.No. RIC1614694)

OPINION

APPEAL from the Superior Court of Riverside County. Randall S. Stamen,  
Judge. Affirmed.

Brenda M. Kruszewski, in pro. per., for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

**I. INTRODUCTION**

Plaintiff and appellant, Brenda M. Kruszewski (BMK), formerly known as Brenda K. Davis, appeals from the judgment dismissing her verified complaint, with prejudice, following a default prove-up hearing. In a written ruling, the court determined that the

complaint was barred by the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion). We affirm.

## II. FACTS AND PROCEDURAL BACKGROUND

### A. *Events Preceding and Underlying BMK's Complaint*

#### 1. The 2003 Judgments in Favor of BMK and James S. Davis

In August 2003, BMK and her then-husband, James S. Davis, obtained money judgments in Riverside County Superior Court, case No. RIC349949 against Robert Cullen and others for personal injuries BMK and Mr. Davis suffered in an airplane crash. Two judgments were issued: one in favor of BMK in the principal sum of \$4.1 million, entered on August 22, 2003, and one in favor of Mr. Davis in the principal sum of \$6.025 million, entered on August 27, 2003. (*Davis v. A United, Inc.* (Nov. 20, 2015, E062397) [nonpub. opn.] [at pp. 3-4] (*Davis*).)<sup>1</sup>

#### 2. The 2011 Assignments of the Judgments to A-United, Inc.

In January 2011, BMK and Mr. Davis assigned the money judgments to A-United, Inc. (A-United) for collection purposes pursuant to a written agreement (at times referred to as the Davis/A-United Agreement) and an Acknowledgement of Assignment. Among other things, the agreement provided A-United would loan BMK and Mr. Davis \$30,000 and that A-United would receive 50 percent of “all amounts received” in collecting the judgment after the loan was repaid and after A-United’s costs were deducted. The

---

<sup>1</sup> On our own motion, we take judicial notice of our unpublished opinion in *Davis*. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

agreement also allowed BMK and Mr. Davis to terminate or “discharge A-United at any time,” without prejudice to A-United’s right to recover the loan amount, costs, and the value of its services rendered in collecting the judgments at A-United’s “then applicable hourly rates.” The agreement gave A-United an “irrevocable lien” against the judgments in order to secure BMK’s and Mr. Davis’s obligations to A-United pursuant to the agreement. Takashi Cheng signed the agreement on behalf of A-United.

3. The 2012 Order in Case No. RIC349949 Confirming A-United’s Discharge

On January 23, 2012, an order was filed in the Riverside County Superior Court, case No. RIC349949, confirming BMK’s and Mr. Davis’s termination or discharge of A-United pursuant to the written agreement. The order states: “1. Judgment Creditors Brenda K. Davis and James S. Davis have legally discharged A-United. As a result from the date of discharge forward A-United no longer has standing to collect on the Judgment Creditor[s’] Judgments. The Judgment Creditors In Pro Se are the acting Parties with full standing to litigate collections efforts and issues against Judgment Debtors. The Acknowledgement of Assignment was based solely on the Davis/A-United Written Agreement above. It has no separate legal basis. Therefore the Acknowledgment of Assignment is cancelled. [¶] 2. This Court does not make any decisions, rulings or orders on A-United Lien Claims or offsetting claims by the Davis Judgment Creditors. [¶] 3. This Court does not make any decisions, rulings or orders on any Breach of Contract Issue under the Davis[/]A[-]United Agreement.”

#### 4. The August 2013 Judgment in the Los Angeles County Action

On August 12, 2013, a judgment was entered in Los Angeles County Superior Court, case No. KC061317, titled *U.S. Affiliated, Inc. v. Cullen* (Feb. 3, 2015, B255250) [nonpub. opn.] (at times referred to as the L.A. County action). The record on appeal contains no other records from the L.A. County action, including the pleadings, but the judgment in the action shows Brenda K. Davis was a defendant and cross-defendant, her default was entered in the action, and she did not appear at trial in the action. Other defendants in the action included Robert J. Cullen, Teresa M. Cullen, James Davis, and A-United.

The judgment in the L.A. County action states: “After trial in the matter, the Court RULED as follows:

“1. A-United, Inc. d/b/a A-United Financial (‘A-United’) is the valid assignee of the judgment entered on August 22, 2003 in favor of Brenda Davis entered in the [Riverside County Superior Court, case No. RIC349949 (the Riverside County action)] against Robert J. Cullen and Teresa M. Cullen, and various other debtors, in the amount of \$4,100,000.00.

“2. Having assigned all right, title and interest in the aforementioned judgment to A-United, Brenda Davis could not and cannot revoke this assignment without the consent of A-United and A-United is the current holder of all of Brenda Davis’[s] right, title and interest in the aforementioned judgment.

“3. All of Brenda Davis’[s] purported subsequent assignments of the aforementioned judgment, after the assignment by Brenda Davis to A-United of Brenda Davis’[s] right, title and interest in the aforementioned judgment to A-United, are void as Brenda Davis could not and cannot subsequently assign her interest in the aforementioned judgment without the consent of A-United.

“4. Brenda Davis cannot hereafter assign or otherwise encumber the aforementioned judgment without the express written consent of A-United. [¶] . . . [¶]<sup>2]</sup>

“11. A-United may proceed with the judicial foreclosure of the real property (the ‘Claremont Property’) which is the subject of this current litigation, commonly known as 1090 Lake Forest Drive, Claremont, California . . . . [¶] . . . [¶]

“14. For the purposes of California [Civil Code] § 704.710, et. seq. [concerning homestead exemptions] trial in this matter shall constitute the [Order to Show Cause] Re: Sale of Dwelling and an Order of Sale may issue from this Court forthwith upon

---

<sup>2</sup> In paragraphs 5 through 8, the judgment provides, in terms similar to paragraphs 1 through 4, that A-United was the valid assignee of James S. Davis’s judgment in the Riverside County action; James S. Davis could not revoke that assignment without A-United’s consent; A-United was the current holder of all of James S. Davis’s right, title, and interest in the judgment; all of James S. Davis’s purported subsequent assignments of the judgment were void; and James S. Davis could not assign or otherwise encumber the judgment without the express written consent of A-United. In paragraphs 9 and 10, the judgment provides that James S. Davis’s prior assignment to NIPA Investment, Inc., the predecessor in interest to U.S. Affiliated, Inc., “is subordinate to the lien rights of A-United as to any real property in the County of Los Angeles owned by Robert J. Cullen and Teresa M. Cullen, including the property commonly known as 1090 Lake Forest Drive, Claremont, California,” and that this prior assignment had been assigned to A-United, so that “all of James S. Davis’[s] right, title and interest in the aforementioned judgment have now been fully and completely assigned to A-United.”

application by A-United with the levying officer for the sale of the Claremont Property.”<sup>3</sup>  
(Bolding & italics omitted.)

5. The Grant Deed for the Claremont Property (September 2013)

On September 25, 2013, Robert J. Cullen and Teresa M. Cullen, as grantors, executed a grant deed conveying the real property located at 1090 Lake Forest Drive in Claremont (the Claremont Property) to Collect Access, LLC, as grantee.

B. *BMK’s Verified Complaint in this Action*

In November 2016, BMK filed her verified complaint seeking to establish her sole ownership to her 2003 judgment; to void, as a fraudulent transfer (Civ. Code, § 3439 et seq.) the Cullens’ September 2013 grant deed conveying the Claremont Property to Collect Access, LLC; and to restrain the defendants from interfering with BMK’s efforts to enforce her judgment against the Claremont Property. The complaint also sought \$1.6 million in “special damages” according to proof.

The complaint named as defendants Robert J. Cullen, Teresa Cullen, Collect Access, LLC, Tappan Zee, Zee Law Group, P.C., Takashi Cheng, A-United, James S. Davis, and Carrie Gan, but BMK dismissed the complaint, without prejudice, against Robert J. Cullen, Teresa Cullen, and James S. Davis. The six other defendants failed to answer and their defaults were entered.

---

<sup>3</sup> As the trial court pointed out in its written decision, the judgment in the L.A. County action (case No. KC061317) was affirmed on appeal in *U.S. Affiliated, Inc. v. Davis, supra*, B255250. BMK was not a party to that appeal. (*Id.* [at pp. \*\*1-4].)

The complaint alleges, among other things, that BMK renewed her 2003 judgment in 2013; the 2003 judgment is a community property debt of the Cullens; the Cullens currently owe BMK over \$8 million on the 2003 judgment; Tappan Zee is the owner of Collect Access, LLC; Takashi Cheng is the owner of A-United; and A-United and Collect Access, LLC retained the Zee Law Group, P.C to “assist in th[e] [f]raudulent [i]nterference” with BMK’s efforts to enforce her judgment against the Claremont Property, which was worth approximately \$600,000.

The complaint more specifically alleges Takashi Cheng and A-United fraudulently induced BMK to assign her 2003 judgment to A-United; and Zee Law Group, P.C. and Tappan Zee, as counsel for A-United, “owed a fiduciary duty to BMK to sell [the Claremont Property] and pay to [BMK] half of all assets obtained from [the sale] under [A-United’s] prior assignment of [BMK]’s judgment.” But “Zee and Zee Law Group [through Collect Access, LLC] violated that fiduciary duty . . . by taking title to [the Claremont Property]” and the Cullens executed “an illegal” grant deed to Collect Access, LLC. for the Claremont Property.

The complaint further alleges that the January 23, 2012, order in the Riverside County Superior Court, case No. RIC349949, which confirmed BMK’s termination or discharge of her assignment of her 2003 judgment to A-United, was “affirmed” by this court in its November 20, 2015, decision in *Davis*; and, despite their knowledge of the *Davis* decision, A-United, Collect Access, LLC, Tappan Zee, Zee Law Group, and the Cullens, “lied to Courts in [the] Los Angeles County [action], falsely stating . . . that A-

United [was] still the Assignee of [BMK's] judgment,” and “[t]he Los Angeles Courts have no lawful authority to disregard or overrule” the January 23, 2012, order of the Riverside court.

*C. The Default Prove-up Hearing and the Trial Court's Ruling*

After the defaults of the six nondismissed defendants were entered in this action, BMK submitted default prove-up “packages” in support of her judgment, but the court declined to enter judgment based on the prove-up packages and ordered a hearing, which took place on April 27, 2018. (Code Civ. Proc., § 585, subd. (b).) BMK testified by telephone, and BMK's former husband, James S. Davis, was present and testified in person, but the record does not include a reporter's transcript of the hearing. Due to its complexity, the court took the matter under submission and issued its written order on July 9, 2018.

By its written order, the court dismissed BMK's complaint, with prejudice, on the ground the doctrines of res judicata and collateral estoppel barred BMK from prosecuting the “claims and issues” raised in her complaint. The court noted that the 2003 judgment or judgments in the Riverside County action had been “assigned and reassigned” by BMK, James S. Davis, and others, and “[u]ltimately” the L.A. County action—Los Angeles County Superior Court, case No. KC061317, titled *U.S. Affiliated, Inc. v. Cullen*—“was filed to establish the interests of all assignors and assignees, including [BMK], in the Riverside County judgment.” The court noted that the August 12, 2013, judgment in the L.A. County action provided that BMK “could not and cannot revoke



[her] assignment” to A-United without A-United’s consent, and that A-United was the “current holder” of all of BMK’s right, title, and interest in the 2003 judgment. BMK appeals the judgment of dismissal.

*D. The Record on Appeal*

The record on appeal is scant. As noted, it does not include a reporter’s transcript of the default prove-up hearing in this action. It includes a copy of BMK’s verified complaint, together with the January 23, 2012, order in the Riverside County action, attached to the complaint as an exhibit. It includes a brief by BMK’s counsel, submitted in support of BMK’s “default judgment prove up,” together with an unsworn declaration by James Steven and three additional exhibits, namely, (1) the written agreement providing for A-United’s assignment of the 2003 judgments in the Riverside County action, (2) the August 12, 2013, judgment in the L.A. County action, and (3) the September 25, 2013, grant deed by which the Cullens conveyed the Claremont Property to Collect Access, LLC. The record also includes the court’s written order following the default prove-up hearing, the notice of appeal and related filings, and the register of actions, but it does not include any other records from the L.A. County action.

### III. DISCUSSION

BMK claims the defaulted defendants in this action “stole” her 2003 judgment from her, then wrongfully filed a “full [s]atisfaction” of the judgment without paying her any money and without her consent. She states she does “not understand why” the court dismissed her complaint, with prejudice, and she asks this court to order the defaulted

defendants to pay her the money they “stole” from her by selling the Claremont Property without paying her any money and without her consent.

We are not at liberty to grant BMK the relief she seeks.

On appeal, “a judgment is presumed correct”; “all intendments and presumptions are indulged in favor of correctness”; and “the appellant bears the burden of providing an adequate record affirmatively proving error.” (*Fladeboe v. American Isuzi Motors Inc.* (2007) 150 Cal.App.4th 42, 58.) As noted, the court dismissed BMK’s complaint, with prejudice, after concluding the “claims and issues” raised in the complaint were barred by the doctrines of res judicata and collateral estoppel. As we explain, BMK has not met her burden of adducing an adequate record on appeal to support her essential claim that the court erroneously dismissed her complaint, with prejudice.

There are two aspects to the doctrine of res judicata: claim preclusion and issue preclusion. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823-824.) Claim preclusion, the primary aspect of res judicata, bars claims that were, or that should have been, advanced in a previous lawsuit involving the same parties. (*Id.* at p. 824.) Claim preclusion applies if a second lawsuit involves (1) the same cause of action, (2) between the same parties, (3) after a final judgment on the merits in the first lawsuit. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.)

Issue preclusion, by contrast, has historically been called “collateral estoppel” and bars relitigating issues that were argued and decided in a previous suit. (*DKN Holdings LLC v. Faerber, supra*, 61 Cal.4th at p. 824.) “[I]ssue preclusion applies (1) after final

adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.” (*Id.* at p. 825, citing *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) Issue preclusion may be asserted against a party to the first suit by any person, including one who was not a party or in privity with a party in the first suit. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828.)

By her complaint in this action, filed in November 2016, BMK sought to establish her sole ownership to her 2003 judgment; to void, as a fraudulent transfer (Civ. Code, § 3439 et seq.) the Cullens’ September 2013 grant deed conveying the Claremont Property to Collect Access, LLC; and to restrain all of the defendants from interfering with BMK’s efforts to enforce her judgment against the Claremont Property. But the August 12, 2013, judgment in the L.A. County action determined that A-United is the “valid assignee” of BMK’s judgment in the Riverside County action; that BMK “could not and cannot” revoke her assignment of her judgement to A-United without A-United’s consent; that A-United is the current holder of all of BMK’s right, title, and interest in the 2003 judgment; and that A-United could proceed with the judicial foreclosure of the Claremont Property. Although the record does not include any other records from the L.A. County action, the judgment in the L.A. County action shows BMK was a defendant and cross-defendant in the L.A. County action, that her default was taken in the action, and she did not appear at trial.

Thus, the judgment in the L.A. County action supports the court's conclusion here that the issues raised in BMK's complaint in this action—including whether BMK or A-United was entitled to enforce BMK's 2003 judgment in the Riverside County action and whether BMK or A-United was entitled to proceed with the foreclosure of the Claremont Property—were actually litigated and determined adversely to BMK in the L.A. County action. The doctrine of collateral estoppel—the issue preclusion aspect of *res judicata*—bars BMK from relitigating these issues in this action.

In addition, the record is insufficient to show that the court erred in determining that the *claims* asserted in BMK's present complaint against A-United and the other defaulted defendants—for fraudulent conveyance and money damages in connection with the Cullens' September 2013 conveyance of the Claremont Property to Collect Access, LLC and the property's subsequent sale—were barred by the claim preclusion aspect of *res judicata*. As we have stressed, the record does not include the pleadings filed in the L.A. County action or a transcript of the testimony adduced at BMK's default prove-up hearing in this action. On this record, we are unable to determine whether, based on the L.A. County action, BMK's claims in this action are barred by the claim preclusion aspect of *res judicata*. In any event, it is unnecessary for us to make this determination. It is BMK's burden to adduce a record sufficient to show that the court erred in dismissing her complaint, with prejudice, based on the claim preclusion aspect of *res judicata*, and she has not met this burden.

BMK asserts in her complaint that the court in the L.A. County action was not at liberty to disregard the January 23, 2012, order in the Riverside County action (case No. RIC349949) confirming BMK's termination or discharge of A-United's assignment pursuant to the parties' written agreement for the assignment. She also claims this court "affirmed" the January 23, 2012, order in its November 20, 2015, decision in *Davis*, and, despite their knowledge of the *Davis* decision, A-United, Collect Access, LLC, Tappan Zee, Zee Law Group, and the Cullens, "lied to Courts in [the] Los Angeles County [action], falsely stating . . . that A-United [was] still the Assignee of [BMK's] judgment," and "[t]he Los Angeles Courts have no lawful authority to disregard or overrule" the January 23, 2012, order of the Riverside court.

Two responses are in order. First, this court did not "affirm" the January 23, 2012, order in *Davis*. The case involved an appeal by BMK's former husband, James S. Davis, from the judgment dismissing his complaint for abuse of process against A-United following a default prove-up hearing. (*Davis, supra*, E062397 [at pp. 1-2].) This court affirmed the judgment of dismissal against James S. Davis, after concluding his complaint did not state a cause of action for abuse of process and his declaration was likewise insufficient to show that A-United engaged in any unlawful activity, or that James S. Davis suffered any resulting damages. (*Id.* [at pp. 3-4].) The January 23, 2012, order was mentioned in *Davis*, but the order was neither appealed from nor affirmed in *Davis*, and BMK was not a party to the action or the appeal in *Davis*.

Second, and more importantly, if BMK believed that the January 23, 2012, order in the Riverside County action was relevant to the issues or claims raised in the L.A. County action, then it was incumbent on BMK to bring the order to the attention of the court in the L.A. County action. (See *People ex. rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769-775 [party must affirmatively raise rule of exclusive concurrent jurisdiction by plea in abatement].) In any event, on this record BMK has not shown that the judgment in the L.A. County action is inconsistent with the January 23, 2012, order confirming BMK's discharge of A-United as assignee of BMK's 2003 judgment. Although the order confirmed BMK's discharge of A-United's assignment, the order expressly did not determine A-United's lien or breach of contract claims against BMK or her 2003 judgment. The record is inadequate, but the court in the L.A. County action may have determined that A-United's lien and breach of contract claims against BMK outweighed any interest BMK had in her 2003 judgment, and for that reason assigned the judgment to A-United which, in turn, authorized the Cullens to convey the Claremont Property to Collect Access, LLC.

We recognize that BMK suffered serious injuries in the plane crash and that she originally had every right to fully enforce her \$4.1 million 2003 judgment against the Cullens. We are not unsympathetic to the physical and emotional hardship BMK has suffered over the years, having been unable, it appears, to collect any amounts from the Cullens in satisfaction of her 2003 judgment. But in light of the August 2013 judgment in the Los Angeles County action, which adjudicated BMK's and A-United's right, title

and interest in the 2003 judgment, we are unable to grant BMK any of the relief she sought in her November 2016 verified complaint in this action.

#### IV. DISPOSITION

The judgment of dismissal is affirmed. BMK shall bear her costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

                    FIELDS                    

J.

We concur:

                    MILLER                    

Acting P. J.

                    CODRINGTON                    

J.